

BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of J.M.)
Petitioner)
)
and) **CAUSE NO. 111107-81**
)
The Indiana High School Athletic Assoc. (IHSAA),)
Respondent)
)
Review Conducted Pursuant to)
I.C. 20-26-14 *et seq.*)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

The Petitioner, J.M., attended Blue River Valley High School (Blue River) until the end of her junior year, the end of the 2010-2011 school year. During the summer of 2011, she withdrew from Blue River and enrolled at Union High School (Union). Petitioner began attending Union on August 3, 2011.

On August 24, 2011, Petitioner’s father completed the student’s portion of the Indiana High School Athletic Association (IHSAA) transfer report requesting full eligibility for Petitioner. The reasons listed on the IHSAA Transfer Report (Transfer Report) for the Petitioner’s transfer were related to academics and course offerings not available at the previous school.

On August 30, 2011, Blue River, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive ineligible status under Rule 19-4 citing the transfer was due to the parents’ dislike of the basketball coach. Blue River did not sign the rule 17-8.5 verification. Also, on August 30, 2011, Union, the receiving school, completed its portion of the Transfer Report citing that Petitioner’s transfer was the same as the reason given by the Petitioner’s parents. Union recommended that the Petitioner receive full eligibility under Rule 19-5. On September 19, 2011, the Assistant Commissioner of the IHSAA determined Petitioner was ineligible under Rule 19-4.

The Petitioner sought review by the IHSAA Review Committee of the Commissioner’s determination and requested full eligibility. The Review Committee conducted its hearing on

October 24, 2011, and issued its decision on November 2, 2011. The decision upheld the Commissioner's determination of ineligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ November 7, 2011. On November 16, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On November 22, 2011, the CRP held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

FINDINGS OF FACT

1. While attending Blue River, the Petitioner participated in varsity basketball during her junior year. The record is not clear whether she played varsity basketball during her freshman year. There is conflict in the record in that the Transfer Report records the Petitioner as playing varsity basketball during her junior year only however, the Review Committee order cites that "she began to play on the varsity team during her freshman (2009-10) year, and continued on the varsity her junior (2010-11) year." (Review Committee order, p. 5, para. 10).
2. The Petitioner was also a member of the varsity track and field team during her junior year.
3. During her junior year, while playing on the varsity basketball team, the Petitioner's parents expressed dissatisfaction with the girls' basketball coach, Coach Koontz, coaching methods.

¹ The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Five members were present at the meeting, including Mr. Pat Mapes (chairperson), Mr. Earl Smith, Ms. Dana Cristee, Mr. Kevin Pempek and Mr. Matthew Rager. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

4. On June 13, 2011, the Petitioner's parents continued to have concerns about Coach Koontz's verbally abusive and demoralizing coaching style that they, along with another set of parents who were dissatisfied with the coach's approach with their daughter, met with the superintendent and the athletic director at Blue River to voice their concerns and ask that the coach be removed.
5. On July 11, 2011, the same parents who complained to the superintendent attended a school board meeting to complain about Coach Koontz and demanded that the coach be fired.
6. The Petitioner's parents initially attempted to enroll the Petitioner in the Shenandoah School Corporation (Shenandoah) but were advised that the Petitioner's acceptance was declined due to the fact that the Petitioner had an Individualized Education Plan (IEP) in place.
7. Based on the denial from Shenandoah, the parents rented a house in the Union school district before attempting to enroll the Petitioner to establish residency.
8. After moving their family into the Union school district, during the summer of 2011, the Petitioner withdrew from Blue River and enrolled at Union High School (Union). Petitioner began attending Union on August 3, 2011.
9. The family lived in the rented home for approximately one month until they learned that their previous home in Muncie, Indiana had lost substantial value if sold. The family chose to return to the Muncie home as they could not afford paying for the rented home and continuing paying the mortgage on the Muncie home while the Petitioner continued to attend Union.
10. On August 24, 2011, Petitioner's father completed the student's portion of the Indiana High School Athletic Association (IHSAA) transfer report requesting full eligibility to Petitioner. The reasons listed on the IHSAA Transfer Report (Transfer Report) for the Petitioner's transfer were related to academics and course offerings not available at the previous school.
11. On August 30, 2011, Blue River, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive ineligible status under Rule 19-4 citing the transfer was due to the parents' dislike of the basketball coach. Blue River did not sign the rule 17-8.5 verification.

12. Also, on August 30, 2011, Union, the receiving school, completed its portion of the Transfer Report citing that Petitioner's transfer was the same as the reason given by the Petitioner's parents. Union recommended that the Petitioner receive full eligibility under Rule 19-5.
13. On September 19, 2011, the Assistant Commissioner of the IHSAA determined Petitioner was ineligible under Rule 19-4.
14. Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility.
15. The Review Committee conducted its hearing on October 24, 2011, and issued its decision on November 2, 2011. The decision upheld the Commissioner's determination of ineligibility.
16. Petitioner appealed to the Indiana Case Review Panel³ November 7, 2011. On November 16, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting.
17. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP.
18. On November 22, 2011, the CRP held a meeting where a quorum of members was present.

CONCLUSIONS OF LAW

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of

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the CRP. In the instant matter, the Respondent has rendered a final determination of student ineligibility for one year, until April 17, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.

3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," *I.C. 20-26-14-6(c)(2)*, not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See I.C. 20-26-14-6(c)(1)*. If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, *I.C. 20-26-14-7(c)*, as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.

5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-4, any student who transfers from one school to a new school for primarily athletic reasons will not be eligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school.
8. Under IHSAA Rule 19-6.2, a student who transfers without a corresponding change of residence by the student's parents may have limited eligibility at the new school.
9. Under IHSAA Rule 17-8.1, the CRP "shall have the authority to set aside the effect of any Rule and grant a general waiver when the affected party establishes, by clear and convincing evidence, and to the reasonable satisfaction of the . . . CRP, that all of the following conditions are met: (a) Strict enforcement of the rule in the particular case will not serve to accomplish the primary purposes of the Rule; (b) The spirit of the Rule will not be offended or compromised by a waiver; (c) Unless waived, an undue harm or burden will be suffered by the affected party from enforcement of the Rule; and (d) When a student eligibility waiver is requested, a hardship condition . . . exists."
10. Under IHSAA Rule 17-8.3, provides that a student seeking a general waiver must show that a hardship condition exists. A "hardship condition" is defined under Rule 17-8.3, in pertinent part, as an "extremely negative non-athletic condition, peculiar to the student, which is caused by unforeseen, unavoidable and uncorrectable events which is beyond the election, control or creation of the student, the student's family, the student's supporters, the student's coaches and the student's school, which causes the student to be ineligible or not fully eligible."
11. Transfer to Union was not primarily for athletic reasons: The record is without substantial evidence to support a finding that the transfer to Union was primarily motivated by athletics. Therefore, a finding of ineligibility under Rule 19-4 is not supported by the evidence.
12. Transfer to Union from Blue River was with a corresponding change of address of the parents: There is substantial evidence in the record to support that the transfer to Union was a transfer with a corresponding change of address under Rule 19-6.2. The family

rented a house in the Union school district and was living there at the time the Petitioner enrolled at Union after their attempt to enroll the Petitioner in the Shenandoah schools due to the fact that the Petitioner had an IEP. There is substantial evidence in the record that the parents of the Petitioner chose to return to their residence in Muncie, Indiana, located outside of the Union school district, after learning that the value of the Muncie home had dramatically diminished and they could not afford to pay both the monthly rent and mortgage payments for the two homes. They also admitted to only renting the residence in the Union school district for purposes of establishing residency in the Union school district following the denial by Shenandoah.

13. Reasons for the transfer to Union, the conduct and actions by the parents, the coach and the school as well as the adverse impact to the Petitioner supports the granting of a general waiver under Rule 17-8.1: There is clear and convincing evidence in the record that the facts of this case show that an extremely negative and hostile environment existed in the girls basketball program which was to such a degree that there were unavoidable and uncorrectable events. The circumstances have become so dire at Blue River that they are beyond the election, control or creation of the student, the student's parents, and the student's supporters. The student, in the end, suffered the harm created by the failure of the adults in the situation to work together and a possible failure to promote a positive, good sportsman like approach to athletics.

There is also substantial evidence in the record to support the allegations of bullying by both students and school staff. The parents have suffered errors in judgment; however, they were not without merit in their concerns for their daughter's well-being. Bullying and its effects are most often difficult to articulate and prove as it is subjective in nature. The actions of the family to remove their daughter from a school by renting a home and moving their family; taking their daughter from a school she has attended for three quarters of her high school career; and the attempts by the family to request help from the school and the school board speak loudly as to the impact the negative athletic environment and bullying had on their daughter. Also, this is not the first case where this coach was mentioned in a less than favorable light for his coaching of the girls' basketball team. The level of concern over the coach's behavior is elevated due to the fact that he is coaching student athletes. There is substantial evidence in the record to

support a continuing concern that instead of being a role model for the students/athletes and teaching good sportsmanship and promoting team cohesiveness, there is a corrosive, negative and potentially harmful environment for the student athletes.

It is likely that the negative and potentially harmful environment in the athletics department at Blue River may have contributed to the bullying. In its totality, and in consideration of the spirit of the rules and purpose of the IHSAA, “to provide for fair wholesome amateur interschool athletic competition,”⁴ the particular facts and circumstances of this matter do not support restriction of the Petitioner’s ability to participate in athletics. Instead, application of the rules under these specific facts would, in effect, punish a student for the failings of the adults on both sides, in particular Coach Koontz. It is improper and against the spirit of the fundamental principles of any athletic competition that students and players be subjected to verbal abuse of any kind. Application of Rule 19-4 would not serve the purpose or spirit of the Rules in this case and therefore, a general waiver is granted due to the existence of a hardship condition.

14. The IHSAA decision to provide Petitioner with ineligibility for one year was arbitrary and capricious and was not supported by the evidence. Instead, the particular facts of this case support application of the general waiver under Rule 17-8.1 as the requirements of Rule 17-8.3 are satisfied by clear and convincing evidence.
15. Therefore, the IHSAA Review Committee’s determination that Petitioner transferred schools primarily for athletic purposes under IHSAA Rule 19-4 is hereby **nullified** as clear and convincing evidence exists to support the existence of a hardship condition and the granting of a general waiver under Rule 17-8.1 and Rule 17-8.3 is merited. The Petitioner is granted FULL ELIGIBILITY immediately.

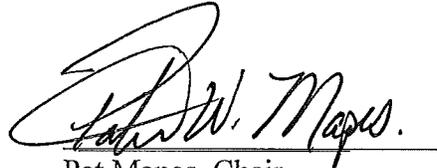
ORDER

The IHSAA Review Committee order is hereby **NULLIFIED by a vote of 4-1.**

⁴ See 2011-2012 IHSAA Articles of Incorporation, Second, p. 1. See also, 2011-2012 IHSAA By-Laws, Article II-Purpose, p. 3.

Petitioner is granted **FULL ELIGIBILITY** immediately.

DATE: 11-30-11


Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.